

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-031617

04/08/2011

HON. JOHN REA

CLERK OF THE COURT
L. Gilbert
Deputy

ALAN N ARIAV

ALAN N ARIAV
2429 EAST RANCHO DR
PHOENIX AZ 85016

v.

DONALD SOSNOWSKI, et al.

DONALD SOSNOWSKI
DAWN SOSNOWSKI
PO BOX 9517
SURPRISE AZ 85374

DIANA ANDERSON
GERALD ANDERSON
1501 W SELDON WAY
PHOENIX AZ 85021

MINUTE ENTRY

The court has considered the following matters in this case:

Plaintiff's Motion in Limine #2, Defendant's Response, and Plaintiff's Reply.

As with Plaintiff's Motion in Limine #1, the Motion is premature.

IT IS ORDERED Plaintiff's Motion in Limine #1 is denied without prejudice.

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Plaintiff's Motion for Partial Summary Judgment (re: Defendant's knowledge of the Gold Fund), Defendant's Response, and Plaintiff's Reply.

Plaintiff's Motion fails to establish a *prima facie* case for partial summary judgment. Defendant's disclosure statement clearly states that the documents provided with the statement were "provided by Mr. Sosnowski after this lawsuit was initiated." Nothing in the disclosure or the attached documents indicates that Defendant Anderson had knowledge of the Gold Fund during the relevant period. The declarations of Norman Haase, Alan Ariav, and Peter Taylor submitted in support of the motion contain inadmissible hearsay concerning what an out of court witness stated to the declarant about Defendant Anderson. Civil Rule 56(e) requires facts "as would be admissible in evidence."

IT IS ORDERED Plaintiff's Motion for Partial Summary Judgment is denied.

Motion for Protective Order and to Quash Subpoena Duces Tecum and Subpoena for Deposition of Jerry Moody, filed March 11, 2011, and Plaintiff's Response.

The Motion for Protective Order concerns a deposition scheduled for April 4. If any issues regarding the deposition of Mrs. Anderson remain unresolved, the Court will address them in the status conference set for April 8. As to the subpoena for deposition of Jerry Moody, it appears that a subpoena was issued by the Clerk of the Court. However, Civil Rule 30(a) provides that depositions of non-parties or expert witnesses shall not be taken except by agreement of the parties or order of the court.

IT IS ORDERED the Court finds Defendant's Motion for Protective Order moot at this time. The Motion to Quash Subpoena for deposition of Jerry Moody is granted. The Court will consider a motion by Plaintiff to take the deposition of Mr. Moody. Based on statements in Plaintiff's Response, the deposition appears justified.

IT IS ORDERED Defendant's Motion to Quash Subpoena *Duces Tecum* directed to Jerry Moody is denied.

Plaintiff's Application for Entry of Default Against Donald and Dawn Sosnowski, Plaintiff's Brief to the Court re: Personal Service on Sosnowski Defendants, Plaintiff's Brief re: Proper Service in Person on Sosnowskis with New Evidence of Proper Service.

Plaintiff filed an Affidavit of Service of Process on Defendants Donald and Dawn Sosnowski and seeks entry of default based on the Defendants' failure to appear. The Court noted in its minute entry of February 23, 2011, that the Court had received correspondence from Joseph Leslie asserting that he was the one handed the Summons and Complaint by the process

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server and that he had nothing to do with the case. Based on the evidence presented by the Plaintiff, the facts relevant to service of process on the Sosnowski Defendants are these:

1. Donald and Dawn Sosnowski signed a lease for the house on 12020 N. 152nd Drive, Surprise, Arizona, in August 2010 and lived there for a time.
2. In his brief to the Court re: personal service, filed March 15, 2011, on page 3, Plaintiff states “The Sosnowskis unfortunately abandoned the 152nd Drive house shortly after signing their two-year lease.”
3. The same time as the Sosnowskis signed the lease, Joseph Leslie opened a Southwest Gas account for the residence at 12020 N. 152nd Street, Surprise, with the Sosnowskis’ daughter as the credit reference.
4. Joseph Leslie received service of the Summons and pleadings on January 8, 2011, at the residence at 12020 N. 152nd Street, Surprise.
5. Donald Sosnowski has filed two handwritten documents, one on January 31, 2011, and one on February 3, 2011, both entitled “to be quashed,” requesting the quashing of subpoenas served on Sprint and Arizona Public Service for production of documents on his accounts with those companies. The document relating to the Sprint subpoena attached a letter from Sprint to Donald Sosnowski informing him of the subpoena. The letter refers to this case by cause number (CV 2010-031617) and name of the case (Alan Ariav v. Donald Sosnowski).
6. On February 2, 2011, Joseph Leslie filed a document entitled “to be quashed” seeking quashing of a subpoena served on Southwest Gas seeking production of documents relating to his account with the company.
7. Both Donald Sosnowski’s two “to be quashed” documents and Joseph Leslie’s “to be quashed” document have an address “PO Box 9517, Surprise.”

The purpose of service of process is to give the party actual notice of the proceedings against him and that he is answerable to the plaintiff’s claim. The phrase “dwelling house or usual place of abode” in Civil Rule 4.1(d) will be liberally construed to effect service if actual notice has been received. *Marks v. LaBerge*, 146 Ariz. 12, 15 (App. 1985).

The Court finds that Defendants Donald and Dawn Sosnowski have actual notice of the case filed against them. The Court finds that, liberally construed, the residence at 12020 N.

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152nd Street, Surprise, Arizona, is the dwelling house or usual place of abode for the Sosnowski Defendants. The Court finds that Joseph Leslie is a person of suitable age and discretion.

The Court rules that service of process on the Sosnowski Defendants was accomplished on January 8, 2011. They have not appeared and are subject to default. However, Plaintiff's Application for Entry of Default against the Sosnowski Defendants was mailed to the house at 12020 N. 152nd Street, whereas it appears that the Sosnowskis receive mail at PO Box 9517, Surprise, Arizona, 85374.

IT IS ORDERED Plaintiff shall serve his Application for Entry of Default and associated pleadings on the Sosnowski Defendants at PO Box 9517, Surprise, Arizona, 85374. If the Sosnowski Defendants fail to appear and defend within the time specified by the rules after valid service of the Application for Entry of Default, the Court will enter default and consider Plaintiff's Application for Default Judgment.

Donald Sosnowski's January 31 and February 3 documents entitled "to be quashed" and Joseph Leslie's February 3 document entitled "to be quashed."

IT IS ORDERED denying all three requests to quash subpoenas.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Orders 2010-117 and 2011-10 to determine their mandatory participation in eFiling through AZTurboCourt.